to be no bar to an action in tort against the insurer. A prerequisite to recovery is said to be proof that except for the negligence of the agent the policy in all reasonable probability would have been issued. The difficulty of proof is avoided by the presumption arising from a successful medical examination that the risk would in due course be accepted. But the novel feature of this case is the holding that an action *ex delicto* lies against the insurer. It would be a strange doctrine if ordinary private parties were held liable for negligence in failing to accept or reject a proposed offer. While such a liability has been enforced against public service companies, it cannot be said that insurance companies have been recognized as owing any such duty to the public. True, the business of insurance affects so vitally the public as to make the state regulation and control of insurance companies at this day unquestionable. However, no claim can be made that these corporations have been classified with those companies possessing the power of eminent domain with all their resulting obligations to the public. But the principal case holds that this public control creates a duty on the part of insurance companies in favor of the applicant to furnish indemnity or to decline to do so within such reasonable time as will enable the applicant to seek insurance elsewhere. The only other case involving this question seems to be *Boyer* v. *State Farmer's Mutual Hail Ins. Co.*, 86 Kan. 442, 121 Pac. 329, 40 L. R. A. N. S. 164, which is in accord with the principal case and is approved by the annotator in the L. R. A. series. Conceding the liability, the injury done was to the applicant himself, hence the proper parties plaintiff were the deceased's personal representatives and not the proposed beneficiary. The doctrine that the insurer is liable in tort will undoubtedly be readily seized upon in other jurisdictions for the reason that by the overwhelming weight of authority the insurer is not liable *ex contractu* for such delays. *N. W. Mutual Life Ins. Co.* v. *Neafus*, 145 Ky. 563, 140 S. W. 1026, 36 L. R. A. N. S. 1211; *More* v. *N. Y. Bowery Ins. Co.*, 130 N. Y. 537, 29 N. E. 757, *reversing* 55 Hun. 540, 10 N. Y. Supp. 44; *Brink* v. *M. & F. N. M. Ins. Ass'n*, 17 S. D. 235, 95 N. W. 929. But see *Robinson* v. *U. S. Benev. Soc.*, 132 Mich. 695, 94 N. W. 211, 102 Am. St. Rep. 436.

JUDGMENT—SUFFICIENCY OF AFFIDAVIT IN SERVICE BY PUBLICATION.—The statute required an affidavit for publication of summons to state that the postoffice address of the adverse party was unknown. The affidavit in a suit stated that the "residence" of the defendant was unknown. *Held*, the judgment rendered thereon was void. *Norris* v. *Kelsey*, (Colo. 1913) 130 Pac. 1088.

The general principle is that statutes providing for service by publication must be strictly complied with, for the reason that such proceedings are in derogation of the common law, *Pennoyer* v. *Neff*, 95 U. S. 714; *Schoenfeld* v. *Bourne*, 159 Mich. 139; *Schuck* v. *Moore*, 232 Mo. 649; *People* v. *Mulcahy*, 159 Calif. 34; *Tunis* v. *Withrow*, 10 Ia. 305, 77 Am. Dec. 117. Every fact should be shown in the affidavit which is necessary under the statute to give the right to an order for service by publication, *Lumber Co.* v. *Johnson*, 196 Fed. 56; *Harvey* v. *Harvey*, 85 Kan. 689; *Fontaine* v. *Houston*, 58 Ind. 316;

Hannas v. *Hannas,* 110 Ill. 53. Those facts which are enumerated in the conjunctive in the statute, must all be shown in the affidavit, *Cook* v. *Farmer,* 11 Abb. Pr. (N. Y.) 40, affirmed in 34 Barb. 95. If the statute requires the "residence" of the defendant to be stated if known, it is sufficient to give the name of the city where he resides, the street and number therein need not be added, *Burke* v. *Donnovan,* 60 Ill. App. 241.

MASTER AND SERVANT—LIABILITY FOR INJURIES TO INFANT UNLAWFULLY EMPLOYED.—The plaintiff, an infant under sixteen years of age, was employed by the defendant company, and sues for injuries received while cleaning machinery. The defendant set up contributory negligence as a defense. *Held,* § 1723 of MO. REV. STAT. 1909, forbidding the employment of persons under sixteen years of age in cleaning machinery, makes such employment negligence *per se,* and prevents a holding as a matter of law that the child was negligent; but does not prevent the employer from proving as a defense that the child was guilty of contributory negligence as a matter of fact. *Riegel* v. *Loose-Wiles Biscuit Co.* (Mo. App. 1913) 155 S. W. 59.

The holdings in cases where the defendant has employed a child under the age forbidden by statute and then has attempted to set up contributory negligence of the child to prevent recovery for injury received in that employment are by no means harmonious. The cases on the one side hold that the law does not change the rule of contributory negligence and that an infant employed contrary to the statutes may be guilty of contributory negligence as a matter of law. *Beghold* v. *Auto Body Co.,* 149 Mich. 14, 112 N. W. 691; *Borck* v. *Michigan Bolt & Nut Works,* 111 Mich. 129, 69 N. W. 254; *Belles* v. *Jackson,* 4 Pa. Dist. R. 194; *Woods* v. *Kalamazoo Paper Box Co.,* 167 Mich. 514, 133 N. W. 482. The majority of the cases hold with the principal case that the child is not guilty of contributory negligence as a matter of law but may be guilty as a matter of fact. *Darsam* v. *Kohlmann,* 123 La. 164, 48 So. 781; *Norman* v. *Virginia Pocahontas Coal Co.,* 68 W. Va. 405, 69 S. E. 857; *Blakenship* v. *Ethel Coal Co.,* 69 W. Va. 74, 70 S. E. 863; *Sterling* v. *Union Carbide Co.,* 142 Mich. 284, 105 N. W. 755; *Woolf* v. *Nauman Co.,* 128 Ia. 261, 103 N. W. 785; *Smith* v. *National Coal & I. Co.,* 135 Ky. 671, 117 S. W. 280; *Marino* v. *Lehmaier,* 173 N. Y. 530, 66 N. E. 572; *Perry* v. *Tozer,* 90 Minn. 431, 97 N. W. 137; *Rolin* v. *Tobacco Co.,* 141 N. C. 300, 53 S. E. 891; *Queen* v. *Dayton Coal & Iron Co.,* 95 Tenn. 458, 32 S. W. 460. A considerable number of recent decisions, however, hold that contributory negligence is no defense where the child has been illegally employed. *Fortier* v. *The Fair,* 153 Ill. App. 200; *Maddin* v. *Wilcox,* 174 Ind. 657, 91 N. E. 933; *Stehle* v. *Jaeger Automatic Mach. Co.* 225 Pa. St. 348, 74 Atl. 215; *Glucina* v. *F. H. Goss Brick Co.,* 63 Wash. 401, 115 Pac. 843. The decisions in this latter class of cases are based upon the ground that the statutes forbidding the employment of infants are enacted to protect the infant and to prevent child labor, and as these objects can best be obtained by taking away the defenses of the employer and by making him employ infants at his own risk, the decisions seem to be more nearly in accord with the reason and spirit of modern legislation on this subject.